

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

CRIMINAL APPEAL NO. E037 OF 2024

DERICK MOLO MWACHUMA.....
APPELLANT

=VERSUS=

REPUBLIC.....
RESPONDENT

SENTENCE RULING

1. This matter comes before this Court for resentencing following the Judgment delivered on 27th November 2024, which upheld the conviction of the Appellant, Derick Molo Mwachuma, for the offence of Gang Defilement contrary to Section 10 of the Sexual Offences Act No. 3 of 2006.
2. The Court set aside the initial sentence of thirty years imprisonment and directed the filing of reports. The Probation Department has filed a Presentence Report for the Appellant and a Progress Report for his co-accused, both dated 9th January 2025.
3. The Court has carefully considered these reports, the proceedings, the gravity of the offence, and the applicable legal principles.

4. The offence is one of profound gravity. The victim was a five-year-old child, an age of extreme vulnerability. The act was committed within a school environment, representing a grave breach of trust and safety.

5. The involvement of multiple perpetrators compounded the victim's trauma and helplessness, and the nature of the act, being anal penetration, was particularly violent and degrading.

6. The reports confirm the severe and lasting psychological harm inflicted upon the child. These are weighty aggravating factors that demand a sentence which denounces the conduct, deters others, and protects the most vulnerable in our society.

7. In mitigation, however, stands the singularly important fact that the Appellant was a child himself at the time of the offence, being seventeen years old.

8. This status engages the paramount constitutional and statutory framework for child offenders. Article 53(1)(f) of the Constitution of Kenya provides that every child has the right to be protected from detention, except as a measure of last resort, and when detained, to be treated in a manner, and kept in conditions, that take account of the child's age.

9. Furthermore, Article 53(2) mandates that a child's best interests are of paramount importance in every matter concerning the child.

10. This principle is operationalized by Section 216 of the Children Act, 2022, which obligates courts dealing with children in conflict with the law to be guided by the principles of rehabilitation and reintegration, and to ensure any measure taken is proportionate to the circumstances of the child and the offence.

11. Other mitigating factors include the Appellant being a first-time offender with positive character references prior to this incident, and his engagement in vocational training while in custody, which indicates a capacity for rehabilitation.

12. The Court is also mindful of the principle of parity in sentencing. The Appellant's co-accused, J.M.Z., who was a minor at the time of sentence, received a three-year term at a borstal institution, a purely rehabilitative sentence.

13. While the roles of co-offenders may differ, a vast disparity in sentences for individuals who were both minors in the same transaction requires careful justification to uphold the integrity of the sentencing process.

14. The original sentence of thirty years imprisonment, while within the law, created such a disparity and gave insufficient weight to the Appellant's status as a child offender.

15. Section 10 of the Sexual Offences Act prescribes a mandatory minimum sentence of fifteen years imprisonment for the offence of Gang Defilement. The Sentencing Guidelines, 2023, propose a range of twenty years to life imprisonment for the defilement of a child below eleven years by multiple persons.

16. However, these guidelines must be applied judiciously and are not a straitjacket; they must yield to the overriding constitutional principles concerning child offenders. The court's task is to balance the legitimate objectives of punishment and protection of society with the imperative of rehabilitating a child who came into conflict with the law.

17. Having re-evaluated all circumstances, the Court finds that the appropriate balance is struck by imposing a sentence at the absolute statutory minimum.

18. This sentence acknowledges the heinous nature of the crime and satisfies the demands of retribution and deterrence mandated by the Sexual Offences Act. Concurrently, it gives full effect to the constitutional demand that the Appellant's status as a child at the

time of the offence be a primary consideration, recognizing his greater capacity for reform and leaving a tangible hope for his eventual rehabilitation and reintegration into society.

19. A sentence longer than the minimum would, in the unique circumstances of this case where the offender was a minor, unduly eclipse the rehabilitative objective required by law.

20. Consequently, the Appellant, Derick Molo Mwachuma, is hereby re-sentenced to **FIFTEEN (15) YEARS IMPRISONMENT** for the offence of Gang Defilement contrary to Section 10 of the Sexual Offences Act No. 3 of 2006.

21. In accordance with Section 333(2) of the Criminal Procedure Code, this sentence shall be computed from the date of his initial arrest and detention, being 2nd June 2023.

22. Further, and to give practical effect to the rehabilitative objective, the Deputy Registrar of this Court is directed to forward a copy of this ruling and the Presentence Report to the Officer in Charge of the relevant prison, with a strong recommendation that the Appellant be enrolled in and complete comprehensive counselling, psychological support, and vocational training programmes during his term of incarceration.

**Dated, signed and delivered this 19th day of December 2025
in open court at Voi High Court.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the State**

.....**for the Appellant**

ORIGINAL